THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.08.2007

\+ **OMP 179/2004**

M/S GEO MILLER & CO. PVT. LTD ... Appellant

- versus -

INDIAN OIL CORPORATION LTD & OTHERS ...Respondents

Advocates who appeared in this case:
For the Appellant : Mr S.D. Singh with Mr Rahul Kumar Singh
For the Respondents : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal is directed against the order passed by the learned Arbitrator on 12.02.2004 whereby the respondent's application under Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') has been allowed. The respondent had been issued a notice in the present matter and the respondent has also filed its reply but has chosen not to appear before this court today. The matter was passed over on first call to enable the respondent's counsel to be present. Even on second call, nobody is present on behalf of the respondent, therefore, this court is left with no alternative but to proceed with the matter in the absence of the respondents.

2. Certain disputes had arisen between the appellant and the respondent (Indian Oil Corporation) and the same had been referred to arbitration. During the course of arbitration, an application under Section 16 of the said Act was filed by the respondent contending that the issues in dispute before the Arbitrator could not be referred to arbitration because the claim was not a notified claim in terms of the contract. Other grounds were also mentioned for closing the arbitration proceedings.

3. In the impugned order passed by the learned Arbitrator, the issues involved have been crystalised. They are:-

> "1) Whether the present claim is not a notified claim ?
>
> 2) Whether, with the issuance of a no claim certificate on 03.11.1999 and payment being received thereafter on 18.11.1999, the contract stood discharged alongwith the arbitration clause and, therefore, the present claim could at all be referred to arbitration ?"

4. Insofar as the first question was concerned, the learned Arbitrator held that the claim filed by the appellant was not a notified claim. Reliance was placed on para 6.6.1.0 which reads as under:-

> "Should the contractor dispute the validity of any deductions made or threatened by the Owner from any Running Account Bills or any payments due to him in terms of the Contract, the Contractor shall forthwith give notice in writing of his claim in this behalf to the

> Engineer-in-Charge and the Site Engineer within ten (10) days from the date of the issue of orders or instructions relative to any works for which the Contractor claims such additional payment or compensation, or on the happening of other event upon which the Contractor bases such claim, and such notice shall give full particulars of the nature of such claim, grounds on which it is based, and the amount claimed."

It is further provided that:

> "The Contractor shall not be entitled to raise any claim nor shall the Owner be in anyway liable in respect of any claim by the Contractor unless notice of such claim shall have been given by the Contractor to the Engineer-in-Charge and the Site Engineer in the manner and within the time aforesaid and the Contractor shall be deemed to have waived any or all claims and all his rights in respect of any claim not notified to Engineer-in-Charge and the Site Engineer in writing in the manner and within the time aforesaid."

5. According to the learned Arbitrator, the final bill which was styled as RA Bill No. 20 was not a notified claim. Therefore, in view of clause 6.6.1.0, the same was not arbitrable. Having examined the said clause as well as the final bill, I am unable to accept the view taken by the learned Arbitrator. First of all, clause 6.6.1.0 refers to a situation where the contractor disputes the validity of any deductions made or threatened by the owner from any running account bill. The question of any deduction or threatened deduction by the owner of any running account bill does not arise in the present case because the contractor (the appellant herein) had submitted its final bill and the same had not been paid in terms of the contract, as alleged by the appellant. Because the

same had not been paid, a dispute arose between the appellant and the respondent and that was subjected to arbitration. Therefore, in my view, the said clause 6.6.1.0 would not come in the way of the appellant as the same would not be applicable to the facts and circumstances of the present case.

6. Insofar as the letter of 03.11.1999 is concerned, the learned Arbitrator held that the same was given by the appellant voluntarily and once a no claim certificate has been issued in this manner, then no arbitrable dispute remains. The learned counsel for the appellant pointed out that Annexure-A to the reply filed on behalf of the respondents is a copy of the said letter dated 03.11.1999. Significantly, the cheque number and the date as well as the amount had originally been left blank and they were subsequently filled in hand. The fact that they were subsequently filled in, is apparent because the date of the cheque is 18.11.1999, whereas the letter purportedly issued by the appellant was dated 03.11.1999. The endorsement on the letter also shows that the cheque was received on 18.11.1999, therefore, it was not a case of receipt of a post dated cheque. Clearly, therefore, the letter dated 03.11.1999 did not contain the relevant details, such as the cheque number, the date or the amount and, therefore, the finding of the learned Arbitrator that the said letter was given voluntarily and without any duress cannot be taken to be well-founded.

7. In these circumstances, I feel that the disputes between the appellant and the respondent ought to have been taken to their logical conclusion through the arbitration proceedings as the claim of the appellant was arbitrable. Accordingly, the impugned order is set aside. This appeal is allowed. The matter be placed before the learned Arbitrator or his successor for further proceedings within two weeks. The record received from the learned Arbitrator be sent back forthwith.

BADAR DURREZ AHMED
(JUDGE)

August 08, 2007
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